Supreme Court, U.S.
FILED
OCT 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-442

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

---

AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL,
*Petitioner,*

v.

REPUBLIC AIRLINES, INC., NORTHWEST AIRLINES, INC., NWA, INC., BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
*Respondents.*

---

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

---

## AMICI CURIAE BRIEF IN OPPOSITION

---

JOSEPH GUERRIERI, JR.*
JOHN A. EDMOND
GUERRIERI & SWEENEY
Suite 300
1150 - 17th Street, N.W.
Washington, D.C. 20036
(202) 296-7002
*Counsel for Amici Curiae BRAC and IAM*

* Counsel of Record

October 20, 1986

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

## QUESTION PRESENTED

Whether the National Mediation Board has exclusive jurisdiction over disputes under the Railway Labor Act concerning representation rights of competing unions following the merger of two airlines.

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| INTEREST OF THE AMICI CURIAE | 1 |
| SUPPLEMENTAL STATEMENT OF THE CASE | 2 |
| REASON FOR DENYING THE WRIT | 3 |
| THE JUDGMENT BELOW IS IN ACCORD WITH PRIOR DECISIONS OF THIS COURT, THE COURTS OF APPEALS AND THE NATIONAL MEDIATION BOARD | 3 |
| A. Prior Decisions of this Court Vest Exclusive Jurisdiction Over Representation Disputes with the National Mediation Board | 4 |
| B. Courts of Appeals Have, Without Exception, Rejected Jurisdiction Over Representation Disputes Arising Out Of Airline Mergers | 6 |
| C. The National Mediation Board Has Established Policy Guidelines Governing Inter-Union Representation Disputes Following Airline Mergers | 8 |
| CONCLUSION | 9 |

## TABLE OF AUTHORITIES

CASES — Page

*Air Line Pilots Ass'n, Int'l* v. *Texas Int'l Airlines, Inc.*, 656 F.2d 16 (2d Cir. 1981) ..... 3, 6, 7
*Brotherhood of Ry. & S.S. Clerks* v. *United Airlines, Inc.*, 325 F.2d 576 (6th Cir. 1963), *cert. dismissed*, 379 U.S. 26 (1964) ..... 4, 6
*General Committee of Adjustment* v. *Missouri-Kansas-Texas R.R. Co.*, 320 U.S. 323 (1943) ..... 3, 5, 6
*General Committee of Adjustment* v. *Southern Pacific Co.*, 320 U.S. 338 (1943) ..... 3, 6
*International Ass'n of Machinists* v. *Northeast Airlines, Inc.*, 536 F.2d 975 (1st Cir.), *cert. denied*, 429 U.S. 961 (1976) ..... 4, 6, 7
*International Bhd. of Teamsters* v. *Texas Int'l Airlines, Inc.*, 717 F.2d 157 (5th Cir. 1983) ..... *passim*
*Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297 (1943) ..... 3, 4, 5, 6

*AGENCY DECISIONS*

*Republic Airlines, Inc.*, 7 N.M.B. 21 (1979) ..... 4, 9
*Republic Airlines, Inc. and Hughes Air Corp.*, 8 N.M.B. 49 (1980) ..... 4, 8

*STATUTES AND REGULATIONS*

Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* ..... 3
Section 2, Fourth, 45 U.S.C. § 152, Fourth ..... 5
Section 2, Ninth, 45 U.S.C. § 152, Ninth ..... 4, 5, 7

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

---

No. 86-442

---

AIR LINE EMPLOYEES ASSOCIATION, INTERNATIONAL,
*Petitioner*,

v.

REPUBLIC AIRLINES, INC., NORTHWEST AIRLINES, INC., NWA, INC., BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS, and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
*Respondents.*

---

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

---

## AMICI CURIAE BRIEF IN OPPOSITION

---

*Amici curiae* Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers request the Court to deny the petition for writ of certiorari, seeking review of the Seventh Circuit's judgment in this case. The opinion of the Seventh Circuit is now reported at 798 F.2d 967.

## INTEREST OF THE AMICI CURIAE

*Amici Curiae* are the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes ("BRAC") and the International Association of Machinists and Aerospace Workers ("IAM").

BRAC is the certified collective bargaining representative of the craft or class of clerical, office, fleet and passenger service employees on Northwest Airlines, Inc. ("Northwest"). The IAM is the certified collective bargaining representative of, among others, the mechanics and related craft or class on Northwest. BRAC and the IAM's interest in this action is readily apparent as they are the unions whose post-merger certifications are recognized by Northwest and consequently the subject of this action by the Air Line Employees Association, International ("ALEA"). Northwest and ALEA have both consented to BRAC and the IAM's participation as *amici curiae*.

BRAC and the IAM are participating as *amici curiae* because ALEA brought its action in the Northern District of Illinois and did not name either BRAC or the IAM as parties. BRAC and the IAM filed a joint motion to intervene. The district court did not rule on that motion prior to dismissing the entire action for lack of jurisdiction. Thus, BRAC and the IAM are participating, with this Court's approval, as *amici curiae*.

## SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner's statement of the case fails to discuss the opinions below. We summarize the opinions here because they demonstrate the soundness of the courts' rulings on the issue presented.

The district court declined to hear the merits of petitioner's complaint holding that: "[i]n view of the overwhelming and well-developed case law", petitioner's complaint presented a "representation dispute over which the federal courts do not have jurisdiction" (Pet. App. A-6).

The court of appeals affirmed, holding that "[g]iven the Mediation Board's undeniable sole jurisdiction over representation matters, we infer . . . a congressional intention to allow that agency alone to consider the post-merger problems that arise from existing collective bar-

gaining agreements." 798 F.2d at 968-9, *quoting International Bhd. of Teamsters* v. *Texas Int'l Airlines, Inc.*, 717 F.2d 157, 164 (5th Cir. 1983). Like the district court, the Seventh Circuit "found no reason to depart from the consistent well-considered analysis of [their] colleagues in other circuits." 798 F.2d at 968. The Seventh Circuit recognized that although petitioner's complaint was "couched in terms of enforcing the collective bargaining agreement", the underlying dispute was "basically a representational dispute and therefore committed to the sole jurisdiction of the [National Mediation Board]." *Id.*

## REASON FOR DENYING THE WRIT

### THE JUDGMENT BELOW IS IN ACCORD WITH PRIOR DECISIONS OF THIS COURT, THE COURTS OF APPEALS AND THE NATIONAL MEDIATION BOARD.

This Court has held in a series of cases that representation disputes which arise under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, are within the sole discretion of the National Mediation Board ("NMB"). *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297 (1943); *General Committee of Adjustment* v. *Missouri-Kansas-Texas R.R. Co.*, 320 U.S. 323 (1943); *General Committee of Adjustment* v. *Southern Pacific Co.*, 320 U.S. 338 (1943).

In recent years a number of representation disputes have arisen as a result of numerous mergers which have taken place in the airline industry. The courts of appeals have held, without exception, that employee representation disputes which inevitably arise as a result of such acquisitions are not within the federal court's jurisdiction, but must be brought before the NMB. *Int'l Bhd. of Teamsters* v. *Texas Int'l Airlines*, 717 F.2d 157 (5th Cir. 1983); *Air Line Pilots Ass'n, Int'l* v. *Texas Int'l Airlines, Inc.*, 656 F.2d 16 (2d Cir. 1981); *International*

*Ass'n of Machinists* v. *Northeast Airlines, Inc.*, 536 F.2d 975 (1st Cir.), *cert. denied*, 429 U.S. 961 (1976); *Brotherhood of Ry. & S.S. Clerks* v. *United Airlines, Inc.*, 325 F.2d 576 (6th Cir. 1963), *cert. dismissed*, 379 U.S. 26 (1964).

Finally, the NMB has established policy guidelines governing representation disputes arising out of consolidation of the work force following airline mergers. *Republic Airlines, Inc. and Hughes Air Corp.*, 8 N.M.B. 49 (1980); *Republic Airlines, Inc.*, 7 N.M.B. 21 (1979). Such policy provides for recognition of the union certifications on the surviving carrier coupled with a lesser showing of interest (35%) than ordinarily required by the ousted unions in order to obtain a new and prompt election. Based on this overwhelming uniform case law and the NMB's policy governing disputes such as petitioners which arise in the context of airline aquisitions, the petition for writ of certiorari should be denied.

**A. Prior Decisions of this Court Vest Exlusive Jurisdiction Over Representation Disputes with the National Mediation Board.**

Section 2, Ninth of the Railway Labor Act states that "[i]f any dispute shall arise among a carrier's employees as to who are the representatives of such employees . . . it shall be the duty of the Mediation Board . . . to investigate such dispute and to certify . . . the names . . . of the . . . organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier." 45 U.S.C. § 152, Ninth.

This Court has held, pursuant to Section 2, Ninth, that representation disputes involving controversies surrounding the designation and authorization of representatives of employees covered under the Railway Labor Act are committed to the specific jurisdiction of the NMB. *Switchmen's Union* v. *NMB*, *supra*, 320 U.S. 297. In

*Switchmen's Union* v. *NMB*, the union sued in federal court to overturn the NMB's certification of a rival union. This Court held that federal courts lack jurisdiction over representation disputes and that the NMB's jurisdiction under Section 2, Ninth of the Railway Labor Act was exclusive and not subject to review. The Court noted that the congressional intent in drafting that section of the Railway Labor Act was that the "dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law." 320 U.S. at 305.

In *General Committee* v. *M-K-T*, *supra*, 320 U.S. 323, this Court considered a jurisdictional dispute between two unions over which union was the proper representative for the presentation of various claims to the employer. In a situation similar to this case, the carrier reached an agreement with one of the unions which the other union argued was void and violative of Section 2, Fourth of the Railway Labor Act, 45 U.S.C. § 152, Fourth. 320 U.S. at 333.

This Court observed that the Railway Labor Act established a general principle of collective bargaining and "applied a command or prohibition enforceable by judicial decree to only some of its phases . . . . ." *Id.* at 335. The Court went on to state that Section 2, Ninth of the Railway Labor Act was designed to "resolve a wide range of jurisdictional disputes between unions." *Id.* at 336. "However wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them. To the contrary, it fashioned an administrative remedy and left that group of disputes to the National Mediation Board." *Id.*

In *General Committee* v. *M-K-T*, this Court noted that "the command of the [RLA] should be explicit and the purpose to afford a judicial remedy plain" before the Court should imply jurisdiction. *Id.* at 337. This Court

acknowledged that "[t]here may be as a result many areas in this field where neither the administrative nor the judicial function can be utilized. But that is only to be expected where Congress still places such great reliance on the voluntary process of conciliation, mediation and arbitration . . . . Courts should not rush in where Congress has not chosen to tread." *Id.* (citation omitted). Finally, in a companion case to *Switchmen's Union* v. *NMB* and *General Committee* v. *M-K-T*, this Court held that "Congress left the so-called jurisdictional controversies between unions to agencies and tribunals other than the Courts." *General Committee of Adjustment* v. *Southern Pacific Co.*, 320 U.S. 338, 344 (1943).

### B. Courts of Appeals Have, Without Exception, Rejected Jurisdiction Over Representation Disputes Arising Out Of Airline Mergers.

The courts of appeals have held, without exception, that the NMB has exclusive jurisdiction over inter-union disputes arising out of airline mergers and acquisitions. *International Bhd. of Teamsters* v. *Texas Int'l Airlines, Inc.*, 717 F.2d 157 (5th Cir. 1983); *Air Line Pilots Ass'n, Int'l* v. *Texas Int'l Airlines, Inc.*, 656 F.2d 16 (2d Cir. 1981); *International Ass'n of Machinists* v. *Northeast Airlines, Inc.*, 536 F.2d 975 (1st Cir.) *cert. denied*, 429 U.S. 961 (1976); *Brotherhood of Ry & S.S. Clerks* v. *United Airlines, Inc.*, 325 F.2d 576 (6th Cir. 1963), *cert. dismissed*, 379 U.S. 26 (1964).

*BRAC* v. *United Airlines, supra*, 325 F.2d 576, concerned an action filed by BRAC following the United Airlines merger with Capital Airlines. BRAC, which had represented former Capital employees, argued that United was bound by the terms of Capital's collective bargaining agreements. The Sixth Circuit held that although the complaint was couched in terms of a contract dispute, it actually involved a representation dispute and therefore was not within the court's jurisdiction. 825 F.2d at 579.

*IAM* v. *Northeast Airlines, supra*, 536 F.2d 975, involved the merger of Northeast Airlines into Delta Airlines. The IAM had been the representative of certain employees on Northeast prior to its merger with Delta. The union sued over the carrier's refusal to bargain. The First Circuit affirmed the dismissal of the complaint stating that "[a]t the very least, the merger created real doubts about whether plaintiffs represent the majority of any Delta craft or class of employees, and where there is such doubt, federal courts leave resolution of the dispute to the National Mediation Board." 536 F.2d at 977.

*ALPA* v. *Texas Int'l Airlines, supra*, 656 F.2d 16, involved a corporate restructuring of Texas International Airlines which resulted in the creation of New York Air. Following such restructuring, New York Air refused to recognize the Air Line Pilots Association and instead entered into employment contracts with individual pilots. ALPA sued Texas Air and New York Air seeking an order requiring the carriers to recognize ALPA and enjoining them for refusing to honor the ALPA collective bargaining agreement. The Second Circuit noted that the case did not "present a traditional representation dispute; . . . [n]evertheless, even in such unconventional contexts, section 2, Ninth affords the sole and mandatory means for resolving disputes over representation." 656 F.2d at 24 (citation omitted). The court held that "as soon as the action reveals a representation dispute, the court is required to dismiss the complaint." *Id.* at 23 (citation omitted).

Finally, following the acquisition of Continental Airlines by Texas International Airlines, the Teamsters brought an action in federal court seeking an order requiring Texas Air to honor the Teamsters' collective bargaining agreement with Continental. *IBT* v. *Texas Int'l Airline, supra*, 717 F.2d 157. The Fifth Circuit held that the dispute was actually a representation dispute and

therefore committed to the sole jurisdiction of the NMB. "A court may not entertain an action involving such a dispute even if it arises in the context of otherwise justiciable claims." 717 F.2d at 161. The Fifth Circuit held that a court should not even grant a *status quo* injunction if an underlying representation dispute exists, as that would result "at least for the period of the injunction, of deciding the representation issue." *Id.* Thus, the court inferred a congressional intent to allow the NMB "alone to consider the post-merger problems that arise from existing collective bargaining agreements." *Id.* at 164.

### C. The National Mediation Board Has Established Policy Guidelines Governing Inter-Union Representation Disputes Following Airline Mergers.

The NMB has established a policy governing disputes which arise in the context of airline mergers. In *Republic Airlines, Inc. and Hughes Air Corp*, 8 N.M.B. 49 (1980), which involved the merger of Hughes Airwest with Republic Airlines, the NMB determined that where the merged carrier would hold itself out to the public as a single airline, only one certified bargaining representative per craft or class would remain, that of the surviving carrier. The NMB held that "all certifications on [the acquired airline] were extinguished by operation of law upon Airwest's acquisition by Republic." 8 N.M.B. at 56. The Board observed that permitting classifications of the merged carrier to survive a merger would lead to "uneven representation, duplication of effort and confusion" and would reduce the ability of airlines to integrate operations and to maintain a single system. *Id.* at 54-55; *see also IBT* v. *Texas Int'l Airlines*, *supra*, 717 F.2d at 163.

The National Mediation Board, however, affords special protection to a union such as the petitioner whose certifications are extinguished as the result of the merger.

The NMB policy guidelines provide that a union which previously represented the craft or class "on any carrier involved in the merger or similar action" may, within sixty days of the government's approval of the merger, file an application supported by only a thirty-five (35) percent showing of interest instead of the majority interest ordinarily required by the Board. *Republic Airlines, Inc.*, 7 N.M.B. 21, 22 (1979). Moreover, such showing of interest may be evidenced by dues check-off authorizations which the ousted union obtained pursuant to a check-off agreement with the acquired airline. *Id.*

It is evident that this case presents a representation dispute arising as a consequence of the acquisition of Republic Airlines by Northwest Airlines. The Seventh Circuit's decision is therefore fully in accord with prior decisions of this Court, the courts of appeals which have considered similar issues and the NMB's policy guidelines governing airline mergers and acquisitions.

## CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

JOSEPH GUERRIERI, JR.*
JOHN A. EDMOND
GUERRIERI & SWEENEY
Suite 300
1150 - 17th Street, N.W.
Washington, D.C. 20036
(202) 296-7002
*Counsel for Amici Curiae*
*BRAC and IAM*

October 20, 1986

* Counsel of Record